Guerdon Industries *and* The United Rubber, Cork, Linoleum, and Plastic Workers of America. Case 10-CA-15151

April 6, 1981

DECISION AND ORDER

On September 30, 1980, Administrative Law Judge Howard I. Grossman issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Guerdon Industries, Waycross, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. We also find totally without merit Respondent's allegations of bias and prejudice on the part of the Administrative Law Judge. Upon our full consideration of the record and the Administrative Law Judge's Decision, we perceive no evidence that the Administrative Law Judge prejudged the case, made prejudicial rulings, or demonstrated a bias against the Respondent in his analysis or discussion of the evidence.

[2] The Respondent has excepted, *inter alia*, to the Administrative Law Judge's use of the *Wright Line* analysis, *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), in finding that the Respondent violated the Act in discharging four employees. The Respondent contends that this case was heard before the *Wright Line* decision issued and that had it known that the Administrative Law Judge would apply the analysis contained therein, it would have tried its case differently. The Respondent's contention is without merit. The *Wright Line* decision clarified and articulated the analysis that should be used in cases turning on employer motivation. It did not set forth a completely new analysis. Indeed, as was stated in *Wright Line* "the two methods of analysis are essentially the same."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discourage membership in The United Rubber, Cork, Linoleum, and Plastic Workers of America, or any other labor organization, by unlawfully discharging any employees or by discriminating against them in any other manner with respect to their hire or tenure of employment.

WE WILL NOT tell employees that we know the names of union adherents among them.

WE WILL NOT tell employees that we intend to discharge union supporters.

WE WILL NOT promise employees benefits in return for their rejection of any union or their refraining from engaging in union activities.

WE WILL NOT threaten employees with closure of any of our plants in retaliation for their union activities.

WE WILL NOT create an impression that our employee's union activities are futile, by telling them that they or we do not need a union and that we will not have a union.

WE WILL NOT tell employees that they are not to speak to other employees about unions or show them union literature, at any time or at any place on company property.

WE WILL NOT offer employees monetary or other rewards for the names of other employees engaged in union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce any of our employees in the exercise of their rights guaranteed them under Section 7 of the National Labor Relations Act.

WE WILL offer Gerald Kirby, Wanda Short, J. B. Merritt, and Robert Jones reinstatement to their former jobs or, if any such jobs no longer exist, to substantially equivalent jobs, discharging, if necessary, any employee hired to replace any of the aforesaid employees.

WE WILL restore the seniority of the foregoing employees and their other rights and privileges, and WE WILL pay them the backpay they lost because we discharged them, with interest.

GUERDON INDUSTRIES

DECISION

STATEMENT OF THE CASE

HOWARD I. GROSSMAN, Administrative Law Judge: This case was heard at Waycross, Georgia, on June 2

and 3, 1980.[1] The charge was filed on November 20 by the Industrial Union Department, AFL-CIO,[2] "on behalf of the AFL-CIO and/or its appropriate affiliate," which, the evidence shows, is the United Rubber, Cork, Linoleum and Plastic Workers of America (herein the Union).[3]

The complaint was issued on December 7, alleging that Guerdon Industries (herein the Company) violated Section 8(a)(1) of the National Labor Relations Act, as amended (herein the Act) by (1) interrogating employees concerning their union activities; (2) telling employees that (a) it would be futile for them to select the Union as their bargaining representative, (b) the Company was not going to have a union at its plant, (c) the employees did not need a union, and (d) it would discharge employees if they engaged in union activities; (3) promising employees additional vacation time in return for the employees' refraining from engaging in union activities; (4) creating an impression of surveillance of its employees' union activities and telling them that it knew which employees were starting the Union; (5) soliciting employees to inform on the union activities of other employees in return for a monetary reward of $100; (6) promising employees that it would lighten the workload by hiring other employees if they would refrain from engaging in union activities; and (7) prohibiting employees from bringing union literature into the plant and from discussing union activities at any time on company property. The complaint also alleges that the Company violated Section 8(a)(3) and (1) of the Act by discharging and thereafter failing to reinstate four named employees because of their activities on behalf of the Union.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs by the General Counsel and the Company, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Company is a Delaware corporation with an office and three plants located in Waycross, Georgia, where it is engaged in the manufacture of mobile homes. During calendar year 1978, which is representative of all times material herein, the Company sold and shipped finished products valued in excess of $50,000 from its Waycross, Georgia, plants directly to customers located outside the State of Georgia. The Company admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges and the answer denies that the Union is a labor organization within the meaning of Section 2(5) of the Act. Joseph Coffey testified without contradiction that he is an organizer for the United Rubber, Cork, Linoleum, and Plastic Workers of America, and that this organization exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work. Coffey further testified that said organization is affiliated with the AFL-CIO, and that one of such affiliations is the Industrial Union Department (signatory to the charge herein on behalf of the AFL-CIO and/or its appropriate affiliate). Coffey sought and obtained permission from the United Rubber Workers organization to work on the campaign at the Company's plant, and his coworker in this matter was one James Orange, an employee of the Industrial Union Department. As more fully described hereinafter, Coffey actually met with and distributed union literature to employees of the Company in their attempt to start a union.

It is clear that the United Rubber Workers organization is the appropriate AFL-CIO affiliate on whose behalf the charge was filed, and that it is therefore a proper party to this proceeding. It is also clear from Coffey's testimony, and I find, that the United Rubber, Cork, Linoleum, and Plastic Workers of America is a labor organization within the meaning of Section 2(5) of the Act.[4]

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Summary and Factual Analysis of the Evidence*

1. Employee activity on behalf of the Union

Coffey was conducting a union campaign at Waycross Molded Products, also known as Macon Molding, in October 1979. This plant is located in about the middle of Respondent Company's three plants (the Statler, Vagabond, and Diamond Trio plants), and is only a few miles from each of them. On about October 8, as Coffey was passing out leaflets at Waycross Molded Products, he was approached by Gerald Kirby, an employee at the Company's Statler plant, who asked for assistance in getting a union started at the Company. Coffey was too busy at the time, but suggested that Kirby meet him the following night, October 9, at a meeting of Waycross Molded Products employees. Kirby did so, and Coffey gave him advice on how to engage in organizational activity. Kirby and Coffey met a third time, on or about October 13, during which meeting Kirby was accompanied by J. B. Merritt, another employee at the Company's Statler plant. Coffey further discussed the way to get a union started at the Company, and gave Kirby copies of a leaflet describing employee rights under the Act.

On or about October 15, employee Robert Jones and two other employees at the Company's Statler plant also visited the union activity taking place at the Macon Molding plant. They obtained union literature in the form of a large poster with the picture of a chicken and the legend, "The Company's Chickened Out." One of the other employees with Jones wanted to post it on the

[1] All dates hereinafter are in 1979 unless otherwise stated.

[2] See sec. II of this Decision.

[3] See sec. II of this Decision.

[4] In light of my conclusion that the Industrial Union Department, AFL-CIO, acted in a representative capacity in filing the charge, I consider it unnecessary to determine whether it also is a labor organization, an agent of a labor organization, or a proper party in this proceeding. Cf. *International Longshoremen's Association, AFL-CIO, et al. (Coldwater Seafood Corporation)*, 237 NLRB 528 (1978).

bulletin board at the Company's Statler plant, but Jones said that they should first obtain management approval.

Accordingly, the employees approached Eddie Carter, the Company's foreman at the Statler plant, and a supervisor within the meaning of the Act. According to Jones, they showed him a copy of the poster and asked for permission to put it on the bulletin board. Carter refused, told him to put it in the trash can, and said that the employees could be fired. Jones testified that he did put the poster with the trash, and that Carter returned a few minutes later saying that he did not want Jones and the others to communicate with other employees about this matter.

According to Carter, Jones did approach him on October 15 with a request to post something on the bulletin board, to which Carter replied, "Not without management's permission." Carter acknowledged that he was curious about the material to be posted, but denied that he ever saw it. I credit Jones' version of this incident, and conclude that Carter did in fact see the union poster from the Macon Molding plant, and did make the statements attributed to him by Jones.

Jones further testified credibly that other employees approached him a few minutes later and asked him what was going on. He replied that Carter was talking about firing him and his partner for bringing union literature into the plant. When Jones said that Carter told him to put the poster in the trash, the employees said that Jones was scared, whereupon he retrieved the poster from the trash and showed it to the other employees. During the rest of the week, there was talk about the Union among the employees, according to Jones' credible testimony.

On October 18, Jones had a conversation with the Company's general superintendent, Johnny Davis, a supervisor within the meaning of the Act. According to Jones, he was at his work table, where he built roofs, when Davis asked him to step out in the back. Davis asked Jones whether he had anything to do with the Union, and Jones denied it. Davis said that it had "got around" to all three plants that it was Jones who had started the union movement, and that the Union was not actually what Jones thought it was. Jones told Davis about his prior experience with Carter, concerning the chicken poster.

Davis agrees that he had a conversation with Jones on or about October 18, but under different circumstances and with a different subject matter. Thus, both Davis and Jones happened to be going into the yard back of the plant when a casual conversation began. All that Davis said was that Jones' department was not making the piece rate. I credit Jones' version of this conversation. I also credit the testimony of both Jones and Kirby that, on or about October 18, Kirby showed Jones the union leaflet which Kirby had previously obtained from Coffey, and asked Jones to talk to employees about the Union.

2. General Manager Scott's speech on October 19

On October 19, the Statler plant employees were directed to assemble about 3:30 p.m. and were addressed by Sam Scott, the Company's general mangager and a supervisor within the meaning of the Act. According to various employee estimates, the speech lasted from 1 to 2 hours, although Scott said that it lasted about 15–20 minutes. Employee accounts of the speech vary in some details, as is customary in such matters. According to Kirby, the most reliable witness, Scott said that he was not going to have a union at Guerdon, and that the Company did not need a union. Kirby is corroborated on this topic of Scott's speech by Merritt, who added that Scott claimed the employees did not need a union, and would not gain anything from it. Even Scott agreed that he said that the Company did not need a union, although he denied making the other statements. I credit Kirby's and Merritt's testimony on this subject of the speech.

Kirby also testified that Scott said he knew who the people were who started the Union, and that by the end of the meeting he was going to let them go. Employee Wanda Short testified that Scott said some people would not be coming to work the following Monday, and they would know their names before they left (the meeting). Merritt averred that Scott notified the employees that he was going to make an example of some people, that they would not be at work the following Monday, and that anybody participating in the Union would not be there very long. Jones stated that Scott told the employees that some of them would not be working in the plant at the end of the meeting, and "they know who they are." Scott denied making these statements. Although there is some difference in the employee versions of the speech, there is a general theme that Scott told employees he knew the identities of the union adherents and intended to discharge them. The cumulative effect of this substantially consistent employee testimony is more persuasive than Scott's denial, and I credit the employee version of Scott's comments on this topic. I also credit Kirby's testimony that Scott said he did not have to keep the plant open, but could send the orders to another plant in Georgia.

There is agreement between the testimony of the employees and Scott that he promised additional benefits at the meeting. Kirby said that Scott promised additional vacation benefits in the form of 2-1/2 days off work each quarter, while Scott stated that it was 1 day each month for the first year of employment up to 5 days, with more vacation privileges the second year. Scott's version is probably more accurate. Scott also promised additional employees to lessen the workload, persons whom he called "floaters." Scott testified that he had held prior employee meetings in which he announced new benefits as "motivational tools," and was corroborated in this by Jones. I credit Scott's testimony that he had discussed employee benefits during prior meetings.

There is also agreement that Scott held up a $100 bill during his speech, and offered it as a reward to employees on certain conditions. The difference in the testimony involves the condition required to earn the money. According to Kirby and Merritt, the money would be paid in return for the identity of any employee distributing union literature, or posting union literature on the bathroom walls or anywhere. Although there had been graffiti on the bathroom walls for several months, Scott complained only about the posting of literature. Merritt in

fact saw union literature on these walls, documents that had been torn down. Kirby testified that the leaflet he had obtained from Coffey was posted on the bathroom walls, while Short testified that Scott told employees that he had found "some papers" on the bathroom walls, and that he did not like unions.

Scott averred that his offer was in return for the names of persons who defaced the bathroom walls with graffiti, "bawdy" statements. Although the walls were bad, according to Scott, they were not "filthy," and had always been in poor condition with respect to this problem. Crediting Merritt and Kirby, I conclude that union literature in fact was posted on the bathroom walls. Because of Scott's concern with the Union, and the fact that graffiti on bathroom walls was not a new problem, I find that his $100 offer was in return for the names of employees seen posting union literature anywhere in the plant, including bathroom walls. There is inconsistent employee testimony about whether Scott held something in his left hand while holding the $100 bill in his right, and I credit Scott's testimony that it was a statement of comparative paychecks at the three plants.

Scott said that his speech was caused by the fact that the Statler plant was not operating as efficiently as the other two plants. Although it was producing as many mobile homes, it took more overtime to accomplish this result. This did not cause the Company any loss of profits, according to Scott, because of the Company's complicated combination of hourly and incentive pay, but it did operate to the disadvantage of one group of employees.

Merritt, on the other hand, testified that Scott had previously sent around a memo saying that Statler was the best plant of all three, that it had made the most money, and that he congratulated the employees. I credit Merritt's testimony.

Scott maintained that the object of his speech was to get each Statler employee to make a "personal commitment" to more work and less absenteeism. He denied any knowledge of union activity at Guerdon, although he admitted knowledge of same at nearby Macon Molding. As a symbol of each employee's pledge to a personal commitment, Scott asked the employees to show up promptly at 7 a.m. the following Monday. If they did not do so, Scott would infer that they did not wish to make a "personal commitment," and that they intended to terminate their employment. Kirby and Jones agreed that Scott did call for a commitment to harder work, and told the employees to call in the following Monday if they could not arrive by 7 a.m. I conclude that Scott did in fact make these statements during his speech.

3. The discharges of Kirby and Short

Gerald Kirby and Wanda Short tried to clock out after Scott's speech on October 19. They could not find their timecards, and Larry Youmans, their foreman and immediate supervisor since January 1, asked them to come into the office. According to Kirby, Youmans said that they were being laid off because of lack of work, and that he hated to see them go because they were two of the best workers that he had. Youmans testified that he told the employees that they were being laid off because there were too many employees in their department, and that their work was not satisfactory. Asked whether he also said that he hated to see them go, Youmans replied, "Not that I can remember." Asked again by company counsel, Youmans made a definite denial. Wanda Short testified that Youmans said the Company needed only one employee in her department. She could not remember whether Youmans said anything "nice" to the employees.

Kirby and Short worked in the Company's "Yard Department," one of the last stages of the mobile home production, where defects ("gigs") in the manufacturing process were corrected, and the homes were cleaned. This latter function was performed by Short, who testified that she was the "principal" employee cleaning the homes, although she occasionally received help from other employees.

In addition to working in the same department with Short, Kirby also drove her to and from work. Kirby spoke to Short about the Union during these rides, but there is no evidence that Short spoke with other employees about the subject, or engaged in other protected activity.

Plant Manager Scott testified that there were four employees in the yard department at the Statler plant, whereas the other two plants (Vagabond and Diamond Trio), comparable in size to Statler, had only two employees in similar departments. This problem of "overstaffing" was first noticed about 30 days before the October 19 meeting. Scott therefore notified the Statler plant to reduce its yard complement to two employees by laying off the two "that were not doing the best work." Other than this general instruction, Scott had no knowledge of the identity of the employees to be laid off, according to his testimony.

General Superintendent Davis testified that the Statler yard department previously had two employees, but, "a couple of months" before the October 19 discharges, i.e., about the middle of August, the complement was raised to four employees. About 3 weeks before the discharges, i.e., about the end of September, Scott told Davis to reduce the complement to two, according to Davis. Prior to this testimony, however, Davis denied that anybody told him that any employees had to be laid off. Davis further testified that he "passed" the matter on to Statler Foreman Eddie Carter, and did not participate in selecting which employees would be discharged.

Carter stated that he had four employees in the yard department, and that Wanda Short was the "cleanup girl." He averred that Scott and Davis told him that he could have only one cleanup girl and one yardman, but did not tell him who "to set up for layoff." Carter testified that he received instructions from Scott and Davis on October 19, although "a couple or 3 days" before this, Davis told him that he had too many employees in the yard. Carter discussed with Youmans the employees actually to be laid off, but was not informed about the actual date of the discharge until the morning of October 19.

Carter also testified to meetings with Kirby and Short about 2 weeks before October 19, in which he criticized

their work. About 3–4 days before this, Carter and Davis had "observed" the work of Kirby and Short because the department was not running properly. Kirby stated that Carter had "little meetings" with the group in the yard, saying that they were not up to standard and that he, Kirby, had an individual meeting with Carter on this subject. Short could not remember any such meeting.

Youmans testified that he did not make regular efficiency reports on employees, but that he did make critical reports to Carter about the work of Kirby and Short about 1 month before the layoffs. Youmans further testified that Carter told him to lay off Kirby and Short, although the date of this instruction is not specified. The layoffs took place on October 19, and Youmans' testimony concerning those events has been described above.

I credit Carter's and Youmans' testimony, partially corroborated by Kirby, that Kirby and Short were criticized by management about their work performance 3–4 weeks before their discharges on October 19. Further, I accept as true Carter's testimony that Scott and Davis told him on October 19 to reduce the size of the yard department, and that Davis had said about the same thing 2–3 days before that date. I also credit Youmans' testimony that Carter told him to lay off Kirby and Short.

Davis' testimony on the chronology of the alleged decision to reduce the yard department, i.e., 3–4 weeks before the discharges, is inconsistent with Carter's affirmation that this took place a few days before October 19. I reject Davis' testimony on this subject, and find that the earliest mention of the alleged necessity to reduce the yard department took place a few days before the October 19 discharges, at a time contemporaneous with Jones' talk with Carter about the chicken poster, on October 15.

In summary, the work performance of Kirby and Short was criticized by management 3–4 weeks before their discharges, as was the work performance of other employees, but company discussion about reduction of the yard department did not take place until the advent of the employee activity on behalf of the Union.

It is clear that the Company had knowledge of the employee activity because of Jones' conversations with Carter on October 15, and with Davis on October 18. Company knowledge of the identity of the union adherents may be inferred from Scott's speech. Accordingly, I find that the Company knew of Kirby's activities described above, and that he was a supporter of the Union. Because of the Company's animus against the Union shown by the record, and because Kirby's discharge took place within a few days of, or contemporaneously with, the Company's discovery of his union sympathies and activities, I infer that this factor, rather than the alleged necessity to reduce the employee complement in the yard department, was the principal reason he was discharged.

This inference is buttressed by the Company's actions with regard to the Yard department at the Statler plant. Asked by company counsel why the Company allowed the Statler Yard department to go for "so long" with four employees, General Superintendent Davis replied that he was trying "to establish a better department . . . to where we could pick through some people, maybe." But Davis also testified in effect that the department was raised from two to four employees in about the middle of August, prior to any known company dissatisfaction with the work of Kirby and Short. There is no evidence in the record to explain the Company's failure to do the same at its other two plants. Scott described the Statler yard as "overstaffed," not as an experiment to get better employees, and claimed that he noted this about 30 days before the October 19 discharges; i.e., on or about September 19. Considering the testimony of Scott and Davis together, the Company decided in the middle of August to double its Statler yard staff in order to find better people, but about 4 weeks later, prior to observation of any employee deficiencies, decided to get rid of two of the employees because the department was overstaffed. This seemingly erratic corporate behavior supports the inference that the Company's reason advanced for the discharge of Kirby (and Short) is a pretext. If their work performance warranted discharge and the department was overstaffed, the Company has not adequately explained why it waited several weeks to discharge them. When the actual date of discharge—immediately after the advent of the union campaign—is taken into consideration, the inference is compelling that the discharges were related to this event rather than to work performance and departmental overstaffing. Kirby may have had deficiencies as an employee, but the Company tolerated them until he became an adherent of the Union. I find that the actual reason for his discharge was his union activity.

Although Kirby was active on behalf of the Union, Short's participation consisted simply in listening to Kirby talk about the Union during their rides to and from work. The General Counsel urges that the Company nonetheless discharged Short because of its belief that she was actively engaged in the union movement. I conclude that this argument is meritorious. Short worked in the same department with Kirby and, more particularly, associated with him in the automobile rides—an association with which the Company must have been familiar. Under these circumstances, it would have been natural for the Company to assume that Short shared the union sympathies of, and joined in the activities of, a known union supporter. The Company's opposition to the union movement was strong, and its reasons for Short's discharge, being the same as those given for the termination of Kirby, are pretextual. Wanda Short, whose actual role was rather passive, became involved in circumstances which included an active union movement, and the Company's intense resistance to it. On similar evidence, the Board has concluded that an employee "was swept into a personnel action designed to retaliate against the Union's display of strength . . ." and that the discharge was motivated by "his assumed participation in unacceptable group activity."[5] A similar inference is warranted on the facts in this case, and I find that Short's discharge was motivated by the Company's belief that she was engaging in activities on behalf of the Union. As with Kirby,

[5] *Gulf-Wandes Corporation*, 233 NLRB 772, 778 (1977).

the Company did not consider any deficiencies she may have had as sufficient reason to discharge her, and did not do so until acquisition of its belief that she was a union supporter.

4. The discharges of Merritt and Jones

Merritt and Jones were discharged on October 22, the Monday following General Manager Scott's speech on October 19. Merritt rode to work with two employees who worked at company plants other than the Statler plant. The car stalled on Monday morning, and Merritt testified that both he and one of the other employees attempted to call the Company, but could not get through. Merritt was late for work, as were the other two employees according to Merritt.

Merritt and Scott agree that the former arrived at or about 7:20 or 7:25 a.m. Scott had arrived at the Statler plant about 7 a.m., and, a minute or so before Merritt's arrival, "pulled" five or six timecards. Two of these were Merritt's and Jones', and the others were cards of employees who had left the Company the prior week, but whose cards had not yet been removed. Scott was standing by the timeclock when Merritt arrived, and asked his name when Merritt began searching for his card. Scott said that he told Merritt he had asked for a "commitment" the prior Friday, that he assumed Merritt did not want his job, and was therefore discharged.

According to Merritt, he told Scott that he tried to call but could not get through, whereupon Scott told him that he should have continued to call until he did reach the plant. "In other words," Merritt replied, "I should have stayed away from work and called until I got [through], instead of just coming on to work?" Scott replied in the affirmative, according to Merritt. Scott testified that he did not believe that Merritt had tried to call, because the Company has "the largest switchboard in Waycross," and Davis reported that he had not received any calls. Merritt testified credibly that he had previously been late, as much as half a day. He usually called, but merely came in to work when he was just a few minutes late. He had an "understanding" with the foreman, who knew he did not have a car. Merritt testified that he attempted to get Davis and Carter to intercede for him on the grounds that he was not normally late, without success.

Merritt later went to the Vagabond plant for his check, and there saw Scott leave a memo on a secretary's desk stating that neither Merritt nor Jones should be rehired without Scott's permission. Scott's office is at the Vagabond plant.

Merritt testified that the two other employees with whom he rode to work were also late that Monday, but were not discharged. Davis denied that any other employees were late. I credit Merritt. Since he rode to work with the other employees and was late himself, the other employees could not have arrived on time.

The Vagabond plant needed an employee in "Final Finish" in January 1980. Merritt testified that he applied for the position with Plant Manager Garland Turner, and the latter replied that he would let Merritt know through another employee. According to Merritt, he was then told to show up for work. Merritt arrived and worked for a few minutes, but Davis told Turner that the Company could not hire Merritt because he had previously been late for work. Turner then told Merritt that he could not have the job.

Jones was also discharged by Scott a few minutes after 7 a.m. on October 22. According to Jones, he tried to call to inform the Company that he would be late because of personal business, but the line was busy until 8:30 a.m., at which time he reached a secretary and left a message. He later tried to get Carter on the phone, but did not receive an answer.

According to Jones, he arrived at 12 o'clock noon on October 22, could not find his timecard, and asked Davis where it was. Davis replied that Scott had it, whereupon Jones went to the Vagabond plant. He could not reach Scott, but received a final paycheck from a secretary. Seeing Davis again, Jones asked, "Does this mean I'm fired?" Davis replied, "You called in late, didn't you?" Jones returned to the Statler plant and appealed for his job to Plant Foreman Carter. The latter advised Jones to wait a few days before speaking to Scott, "because he's kind of upset about the union thing."

Both Carter and Davis deny seeing Jones at all on October 22. According to Carter, Jones came in on October 23, and "didn't have a job." Asked how Jones discovered this fact, Carter replied that "he found out when he didn't have a time card in the rack." Asked whether Jones said something to him, Carter initially replied, no, and again gave a negative answer when asked whether he had any discussion with Jones. Thereafter, in response to a leading question, Carter testified that Jones asked Carter to speak to Scott, and Carter replied that he could not do that—Scott was firing him because he did not report for work Monday and did not call in. Carter denied making the statements attributed to him by Jones, including the remark that Scott was upset about the "union thing." Davis' testimony is similar to Carter's—Jones did not show up or call in on October 22, but came in on October 23 and asked for his job back.

It is incredible, as Carter initially testified, that Jones would have found out that he was discharged without saying anything to anybody about it. The fact that Carter later corrected his testimony, in response to a leading question, gives it less probative weight than Jones' version. Jones' testimony is spontaneous and replete with details which give it the ring of truth, whereas the testimony of Carter and Davis is contrived. Jones' testimony about trying to reach the plant by telephone on October 22, without success, is supported by Merritt's similar problems on the same day. I therefore credit Jones' version of his discharge and his conversations with Carter and Davis on October 22.

Jones had a checkered employment history with the Company, and had been discharged and rehired at least three times, because of absenteeism. Jones thought he had a right to be off work for personal business, because he "thought a lot" of the Company, "worked harder than anybody . . . [and] pulled where some of them wouldn't pull." Davis testified that he rehired Jones four times because he liked him, and because he was a "real good worker" when he was there.

As with Kirby and Short, the Company offers employee deficiencies as the reason for the discharges of Merritt and Jones. In the latter two cases, it was lateness on October 22, after Scott had asked all employees on October 19 to make a "personal commitment" to work harder and bring the Statler plant up to the level of efficiency of the other two plants.

The argument is faulty for several reasons. In the first place, the evidence is not persuasive that the Statler plant actually was less efficient than the Vagabond and Diamond Trio plants. As previously noted, I credit Merritt's testimony that Scott had previously distributed a memo congratulating the Statler employees because their plant was the most profitable of all three of the Company's plants. The Company submitted no documentary evidence to support Scott's October 19 assertion that Statler was less efficient. The matter thus comes down to Scott's declaration of this as a fact, as against his own memo saying the opposite. It is improbable that an employer would commend employees when commendation was not due. On the other hand, Scott's statement on October 19 is suspect because of the advent of the union movement, Scott's obvious hostility to it, and his knowledge that the union adherents worked at the Statler plant. I therefore conclude that Scott's memo more probably reflects the truth, and that Statler was, at least, not less efficient than the other plants.

This fact removes the Company's justification for Scott's October 19 speech. If Statler was no worse than Vagabond and Diamond Trio, then there was no point to Scott's urging the Statler employees to greater efforts to match the other plants. Scott testified that he made substantially the same speech at all three plants. If so, it is pertinent to inquire why the two employees who were late at those plants were not discharged. Scott replied to this question by saying that he "did not commit to any other plant . . . was not having problems with the other factories . . . [and] couldn't have been in both places at the same time." All this is meaningless if, as I conclude, Statler was not less efficient than the other plants.

Without any rational business reason for the speech, the only other explanation for it is the Company's animus against the union movement. I conclude that it was this fact which caused Scott to make his speech, and that he decided to disguise his efforts to stop the Union by making a "motivational appeal" for greater work from his employees. He was aided in this tactic by the fact that he had made a few speeches in the past to employees, and had discussed company problems and employee benefits. Although his October 19 address to employees did contain some references to business matters, these served to cloak his other statements against the Union, and his threats to employees who supported it.

It is true that both Merritt and Jones were late on the Monday following Scott's call for a personal commitment. The Company seized upon this as a reason for discharge of both employees. Merritt was only a few minutes late, a fact which in the past had not even necessitated a telephone call to his foreman. Scott's statement to Merritt that he should have continued to call after getting a busy signal, and should have remained away from work until he did get through, is unreasonable. Scott knew that Merritt was one of the union adherents, since he said he knew the identities of the union supporters in his speech, and his discharge of Merritt is clearly based on that fact. The Company's continuing animus against the Union is evidenced by the fact that it stopped the Vagabond foreman from hiring Merritt in January 1980.

Although Jones was later than Merritt, and did not arrive until noon, he also tried to call in. Jones had actually been absent on prior occasions following which he was discharged. However, he was always rehired because he was a good worker, according to Davis, and one who would do work that other people would not do, according to Jones. The fact that the Company discharged Jones only a few minutes after 7 o'clock on the morning of October 22, and failed to rehire him despite his appeals for his job to Carter and Davis, can only be attributed to the Company's knowledge of his union activities, and its aversion to those activities.

B. *Legal Analysis and Conclusions of Law*

1. Alleged 8(a)(1) violations

The credited evidence shows that the Company engaged in wide-ranging interference with employee rights in violation of Section 8(a)(1) of the Act. General Manager Scott's speech to employees on October 19 contained a variety of unlawful statements. His declaration that he knew the identities of the union supporters and intended to discharge them constituted an unlawful threat and the creation of an impression of surveillance of union activities. The offer of a $100 reward for the names of employees posting union literature on company walls was blatantly unlawful inducement of employees to inform on their fellow employees. Scott's statement that he did not have to keep the plant open, but could divert orders to another plant, constituted a clearly implied threat to close the plant in retaliation for the employees' union activities, and was violative of the Act under well-established law.[6]

It is also clear that Scott promised employee benefits in the form of increased vacation rights and lighter workloads through the hiring of additional personnel. Although Scott had discussed employee benefits in prior speeches, his offers in the October 19 speech were clearly intended to be a reward for employee rejection of the Union, in light of the timing of the offers immediately subsequent to the advent of union activity,[7] and the Company's manifest hostility to that activity. Scott's combined statements that the Company and the employees did not need a union and that he was not going to have one at Guerdon conveyed to his employees the

[6] Although the threat of a plant closure was not alleged in the complaint, it was a part of Scott's speech to employees and is "closely related" to his other unlawful statements. *International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433 (The Associated General Contractors of California, Inc.)*, 228 NLRB 1420 (1977), enfd. 600 F.2d 770 (9th Cir. 1979).

[7] *N.L.R.B.* v. *Styletek, Division of Pandel-Bradford, Inc.*, 520 F.2d 275 (1st Cir. 1975), enfg. 214 NLRB 736 (1974).

message that their activities on behalf of the Union were futile. As such, those statements were unlawful.[8]

In addition, General Superintendent Davis' asking Jones whether he had anything to do with the Union constituted unlawful interrogation under well-established law. Further, Foreman Carter's statement to Jones and other employees that they could be fired, after they showed him a union poster, could reasonably be interpreted as proscribing mere possession of union literature, and as such was unlawful. Carter's order to Jones and other employees not to communicate with fellow employees about union affairs, and/or not to show them the chicken poster, was the oral promulgation of a rule forbidding all solicitation and/or distribution on behalf of the Union on company property, without exception. As such, it was an overly broad rule interfering with the employees' Section 7 rights.[9]

2. Alleged 8(a)(3) violations

Applying the Board's recently enunciated rules for determination of unlawful motivation in 8(a)(3) cases,[10] it is clear that the General Counsel has established a *prima facie* showing sufficient to support an inference that protected conduct engaged in by Kirby, Jones, and Merritt, and the Company's belief in such conduct by Short, was a motivating factor in the Company's decision to discharge these employees. Although the Board's rule speaks only of a showing that "protected conduct" was a factor[11] an extension of the rule to employer *belief* in such conduct is no more than a reiteration of established Board law that a discharge based on an employer's mistaken belief that the employee was engaged in concerted activity is violative of Section 8(a)(3).[12]

Under *Wright Line*, the General Counsel's establishment of a *prima facie* case herein shifts the burden to the Company to demonstrate that all four employees would have been discharged even if they had not engaged in protected activity, or, in Short's case, if the Company had not believed her to be so engaged. The Company has not sustained that burden. Each employee discharged had engaged in union activity, or was believed by the Company to have done so.

Merritt had previously been late a few minutes without calling in, and simply went to work. He had an understanding with his foreman, who knew that Merritt did not have his own car. The only thing different that Merritt did in this case is to engage in union activity. It is clear that he would not have been discharged if he had not done so.

Jones had been discharged several times previously, but for absenteeism rather than lateness. Even without this distinction, it is clear that the Company rehired him on each occasion because he was a good worker and was liked by management. It has not done so in this case, despite Jones' appeal for his job, and the Company's departure from prior practice must be attributed to Jones' activity on behalf of the Union.

In the cases of Kirby and Short,[13] there is some evidence of company dissatisfaction with their work performance in the yard department. On the other hand, there is also evidence of company dissatisfaction with the work of other employees in that department. Whatever the Company's comparative rating of all such employees, the credited evidence shows that the Company's decision to reduce the yard department by discharging the allegedly two worst employees was not made until after the beginning of the employees' union activities. Moreover, the Company's decision first to double the employee complement in the yard department in August, and then to reduce it a few weeks later by firing two employees, remains unexplained. The inference is compelling that, after the advent of the employees' union activities, and the Company's knowledge of identity of the union adherents (according to Scott's speech), the Company fabricated a plan to provide an apparent business reason for the discharges. In the cases of Kirby and Short, it attempted to predate its allegedly impartial business decision, to reduce the yard department, to a time prior to the employees' union activities. The Company has not sustained its burden of showing that, absent such activity, it would have discharged Kirby and Short. On the contrary, its delay in making its claimed business decision and in selecting Kirby and Short as the employees to be discharged, until after the employees' union activities, strongly suggests that they would still be working absent such activities.

Inasmuch as the Company has not met its burden as described above, and the General Counsel has established that the employees' protected activities, or the Company's belief in such activities, is causally related to their discharges, the latter come within the proscription of the Act.[14]

The Company argues that it had no knowledge of the employees' union activities. This contention is clearly wrong as the credible evidence shows. The Company also argues that it did not know the name of the union involved. This contention is irrelevant.

In accordance with my findings above, and upon consideration of the entire record, I make the following:

CONCLUSIONS OF LAW

1. Guerdon Industries is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The United Rubber, Cork, Linoleum, and Plastic Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

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[8] *Hanover Concrete Co.*, 241 NLRB 936 (1979); *Hamilton Avnet Electronics*, 240 NLRB 781 (1979); *Fern Laboratories, Inc.*, 240 NLRB 487 (1979).

[9] *Lance, Inc.*, 241 NLRB 655 (1979); *Roney Plaza Apartments*, 232 NLRB 409 (1977), enfd. as modified 597 F.2d 1046 (5th Cir. 1979).

[10] *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 146 (1980).

[11] *Ibid.*

[12] *Metropolitan Orthopedic Associates, P.C.*, 237 NLRB 427 (1978); see also *Southern Plasma Corporation*, 242 NLRB 1223 (1979); *Sevakis Industries, Inc.*, 238 NLRB 309 (1978); *Gulf-Wandes Corporation*, *supra*, fn. 5.

[13] Although a distinction might be raised between the cases of Jones and Merritt on the one hand, and Kirby and Short on the other, on the ground that the former are pretext cases and the latter dual motive proceedings, the Board's Decision advises us that the perceived significance between such cases will be obviated by its new ruling (*supra*, fn. 10).

[14] *Supra*, fn. 10.

3. By engaging in the following conduct, the Company committed unfair labor practices in violation of Section 8(a)(1) of the Act:

(a) Telling employees that the Company knew the identities of union supporters.

(b) Telling employees that the Company intended to discharge the union supporters.

(c) Promising its employees benefits such as greater vacation rights and lightened workloads, in return for employee rejection of the Union or refusal to engage in union activities.

(d) Interrogating employees as to their union activities.

(e) Threatening employees with closure of the plant in retaliation for the employees' union activities.

(f) Creating an impression that the employees' union activity was futile, by telling them that they and the Company did not need a union, and that the Company would not have a union.

(g) Telling employees that possession of union literature on company property would result in their being discharged.

(h) Telling employees that they were not to speak to other employees about the Union or show them union literature, at any time or at any place on company property.

(i) Offering employees a monetary reward for the names of other employees who posted union literature in the plant.

4. By discriminatorily discharging the following-named employees on the dates indicated opposite their names, and by thereafter failing and refusing to reinstate them, the Company has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act:

Gerald Kirby	October 19, 1979
Wanda Short	October 19, 1979
J. B. Merritt	October 22, 1979
Robert Jones	October 22, 1979

5. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that the Company has engaged in certain unfair labor practices, it is recommended that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that the Company unlawfully discharged Gerald Kirby and Wanda Short on October 19, 1979, and J. B. Merritt and Robert Jones on October 22, 1979, in violation of Section 8(a)(3) and (1) of the Act, it is recommended that the Company be ordered to offer the foregoing employees immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary any employee hired on or since October 19, 1979, to fill any of said positions, and to make said foregoing employees whole for any loss of earnings any of them may have suffered by reason of the Company's acts herein described, by payment to each of them a sum of money equal to the amount he or she would have earned from the date of his or her unlawful discharge to the date of an offer of reinstatement, less net earnings during such period, with interest thereon to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).

Because the Company's widespread unfair labor practices go to the very heart of the Act, and are sufficiently egregious in nature so as to demonstrate a disregard for its employees' fundamental statutory rights, I shall recommend an order requiring it to cease and desist from in any other manner infringing upon such rights.

Upon the foregoing findings of fact, conclusions of law, and the entire record, I recommend the following:

ORDER[15]

The Respondent, Guerdon Industries, Waycross, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the United Rubber, Cork, Linoleum, and Plastic Workers of America, or any other labor organization, by unlawfully discharging any of its employees or discriminating against them in any other manner with respect to their hire or tenure of employment, in violation of Section 8(a)(3) of the Act.

(b) Telling its employees that it knows the identities of union supporters among its employees.

(c) Telling its employees that it intends to discharge union supporters.

(d) Promising its employees benefits in return for their rejection of a union or their refraining from engaging in union activities.

(e) Interrogating employees as to their union activities.

(f) Threatening its employees with closure of its plant in retaliation for their union activities.

(g) Creating an impression that its employees' union activities are futile, by telling them that they and the Company do not need a union and that the Company will not have a union, or in any other manner.

(h) Telling employees that possession of union literature on company property will result in their being discharged or in any other manner disciplined.

(i) Telling employees that they are not to speak to other employees about unions or show them union literature, at any time or at any place on company property.

(j) Offering employees monetary or other rewards for the names of other employees engaged in union activities.

(k) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

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[15] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Offer Gerald Kirby, Wanda Short, J. B. Merritt, and Robert Jones immediate and full reinstatement to their former positions or, if any such position no longer exists, to a substantially equivalent position, without prejudice to his or her seniority or other rights and privileges, discharging if necessary any employee hired to replace any of them, and make them whole for any loss of pay any of them may have suffered by reason of the Company's unlawful discharge of him or her, in accordance with the recommendations set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at each of its plants in Waycross, Georgia, copies of the attached notice marked "Appendix."[16] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by the Company's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps the Company has taken to comply herewith.

[16] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."